

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WILLIAM N. MOSELEY, JR.,

Plaintiff,

v.

TRUTH FOR HEALTH FOUNDATION, et
al.,

Defendants.

Case No. 1:22-cv-01258-ADA-SAB

**ORDER REQUIRING PLAINTIFF TO
SHOW CAUSE WHY SANCTIONS
SHOULD NOT ISSUE FOR THE FAILURE
TO PROSECUTE THIS ACTION**

DEADLINE: FEBRUARY 17, 2023

Plaintiff initiated this action on October 3, 2022. (ECF No. 1.) On the same date, summonses were issued to Defendants. (ECF No. 2.) A scheduling conference is currently set for March 23, 2023. (ECF No. 9.) On December 20, 2022, the Court ordered Plaintiff to file a notice on the status of service on Defendants and whether the scheduling conference should be continued for an appropriate time, given no service documents were returned. (ECF No. 5.) Plaintiff failed to timely respond, and an order to show cause was issued for the failure to file proofs of service, diligently prosecute this action in preparation of the scheduling conference, and file the required status report, in compliance with the Court's December 20, 2022 order. (ECF No. 6.) On January 3, 2023, Plaintiff filed a response to the order to show cause, in which counsel proffered he was taken away from the office due to a mental health emergency that arose in connection with an unrelated case and was unable to timely file a status report. (ECF No. 8.) Plaintiff also proffered he was having difficulty working with the appropriate JAG to facilitate service on Defendants on

1 a military base. Based on these averments, the Court discharged the order to show cause, extended
2 the deadline for Plaintiff to effect service to February 3, 2023, and continued the scheduling
3 conference to March 23, 2023. (ECF No. 9.) As of February 8, 2023, however, no proofs of
4 service were filed on the docket in this action. (See ECF No. 10.) Accordingly, on February 8,
5 2023, the Court ordered Plaintiff to file a status report, no later than February 13, 2023, on the
6 status of service on Defendants in this action. (Id.) Plaintiff was cautioned that failure to comply
7 with the Court's order would result in the issuance of a further order to show cause why sanctions
8 should not be imposed, as well as a potential recommendation that this action be dismissed
9 pursuant to Federal Rule of Civil Procedure 4(m) for failure to serve and for lack of prosecution.
10 (Id. at 2.) Plaintiff's deadline has passed and, once again, Plaintiff has filed neither a status report
11 nor any proofs of service for the Defendants in this action.

12 As indicated in the order setting the mandatory scheduling conference, Plaintiff must
13 "promptly file proofs of service of the summons and complaint so the Court has a record of service
14 ... [f]ailure to timely serve the summons and complaint may result in the imposition of sanctions,
15 including dismissal of unserved defendants." (ECF No. 3 at 1–2.) Local Rule 110 provides that
16 "[f]ailure of counsel or of a party to comply with these Rules or with any order of the Court may
17 be grounds for imposition by the Court of any and all sanctions ... within the inherent power of
18 the Court." The Court has the inherent power to control its docket and may, in the exercise of that
19 power, impose sanctions where appropriate, including dismissal of the action. Bautista v. Los
20 Angeles Cnty., 216 F.3d 837, 841 (9th Cir. 2000).

21 No proofs of service have been filed and Plaintiff has not filed a status report as to service,
22 as previously ordered by the Court. Plaintiff has thus not shown diligence in filing proofs of
23 service and prosecuting this action, and the Court is again left to determine the readiness for the
24 approaching scheduling conference.

25 Accordingly, IT IS HEREBY ORDERED that, no later than **February 17, 2023**, Plaintiff
26 shall show cause in writing why sanctions should not issue for the failure to file proofs of service
27 in this action and diligently prosecute this action in preparation of the scheduling conference, and
28 for the failure to file the required status report, in compliance with the Court's February 8, 2023

1 order. Plaintiff is advised that failure to comply with this order will result in the issuance of
2 sanctions, including monetary sanctions and a potential recommendation that this action be
3 dismissed pursuant to Federal Rule of Civil Procedure 4(m) for failure to serve and for lack of
4 prosecution.

5
6 IT IS SO ORDERED.

7 Dated: **February 15, 2023**


UNITED STATES MAGISTRATE JUDGE